

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

THOMAS E. MERTZ,)	
)	
Plaintiff)	
)	
v.)	Case No. 04-55 Erie
)	
DONZI MARINE, INC. and)	
AMERICAN MARINE HOLDINGS,)	Judge Cohill
INC., in its own right and d/b/a)	
DONZI MARINE,)	
)	
Defendants and)	
Third Party Plaintiffs,)	
)	
v.)	
)	
THE BOAT STORE,)	
)	
Third Party Defendant)	

MEMORANDUM ORDER

Pending before the Court is the Motion to Amend the Third Party Complaint of Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc. Pursuant to Federal Rule of Civil Procedure 15(a) and (cc) (Doc. #27). In their motion, Defendants and Third-Party Plaintiffs are requesting that this Court change the name of the party against whom their third-party plaintiff claims are asserted from "The Boat Store" to "Szczeny Enterprises, Inc. d/b/a the Boat Store." Defendants and Third-Party Plaintiffs further request that this change relate back to the filing date of the original Third Party Complaint based upon their compliance with Fed.R.Civ.P. 15 (c) (2) and (3), or alternatively, that the Court toll the applicable limitations period and allow an amendment of the pleadings to correctly name "Szczeny Enterprises, Inc. d/b/a the Boat Store" based upon principles of equity.

By Order dated April 12, 2007, Third Party Defendant The Boat Store was ordered to file a response to said Motion no later than April 26, 2007 (Doc. #28). To date, no response has been filed by Third Party Defendant The Boat Store.

Having reviewed Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc.'s Motion as well as their supporting Memorandum of Law and exhibits, we find that Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc.'s Motion to Amend the Third Party Complaint must be denied, at least for the time being. In support of their position that this Court should grant their request of a name change, Defendants and Third-Party Plaintiffs cite to a document from the Pennsylvania Department of State, see Exhibit H attached to Defendants and Third-Party Plaintiffs' motion, and state "Szczesny Enterprises, Inc. doing business as the Boat Store is a corporate entity licensed to conduct business in the Commonwealth of Pennsylvania." Yet this document only references Szczesny Enterprises, Inc. and does not mention The Boat Store at all. Additionally, the address listed on Exhibit H for Szczesny Enterprises, Inc. is 10251 West Main Rd., North East, Pennsylvania, whereas the address provided by Greg Szczesny, as the President of The Boat Store, for The Boat Store is 10170 West Main Road, North East, Pennsylvania. See Exhibits E, G and H. Given these discrepancies, the Court cannot confidently conclude that Szczesny Enterprises, Inc. and The Boat Store are essentially one and the same. The Court's denial of Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc.'s Motion to Amend the Third Party Complaint, however, is without prejudice for these parties to come before the Court again in the future if it comes up with more definitive evidence that Szczesny Enterprises, Inc. is doing business as The Boat Store.

AND NOW, this 14th day of May, 2007, it is hereby ORDERED, ADJUDGED, AND DECREED that the Motion to Amend the Third Party Complaint of Defendants and Third-Party Plaintiffs, Donzi Marine, Inc. and American Marine Holdings, Inc. Pursuant to Federal Rule of Civil Procedure 15(a) and (cc) [Doc. #27] is DENIED WITHOUT PREJUDICE.

Maurice B. Cohill, Jr.
Maurice B. Cohill, Jr.
Senior District Court Judge

cc: counsel of record

The Boat Store
c/o Greg Szczesny
5676 Luna Lane
Erie, PA 16